

THE MARK O. HATFIELD

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon
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Agency

Judge Janice M. Stewart granted a plaintiff's motion for partial summary judgment and held that, as a matter of law, an insurance agent was acting on behalf of the defendant insurance company at the time of his alleged malfeasance. The court held that under O.R.S. 744.078(4), the agent's actions fell within the broad reach of the statute since he procured or solicited plaintiff's insurance application. The court rejected defendant's assertion that genuine factual issues existed relative to the agent's motivations; the court held such considerations were irrelevant to the agency determination.

Judge Stewart also concluded that even if the statute were inapplicable, the defendant would still be liable for the actions of the agent under common law agency principles since he acted with actual and apparent authority and all acts took place within the scope of that authority. Pacific Northwest Painting Co., Inc. v. Mid-Century Insurance Co., CV 02-0038-ST (Opinion, July 24, 2002).

Plaintiff's Counsel:
Chris Ledwidge
Defense Counsel:
Stephen Redshaw

Procedure

Plaintiffs attempted to serve a German corporation in compliance with the Hague Convention. The German government issued a certification that service had been successfully and correctly completed. However, the German defendant claimed that it never received service and that the person identified as the recipient in the German certification was, in fact, the employee of another, successor company. Defendant moved for dismissal or, in the alternative, to quash the original summons. Plaintiffs argued that defendants failed to prove that the employee identified in the German certification was not one of their own, but offered no contrary proof.

Judge Malcolm F. Marsh noted that plaintiffs ultimately bore the burden of establishing proper service and that the court could accept defense counsel's

assertions as true. Judge Marsh determined that the summons should be quashed and defendant should be re-served in compliance with the Hague Convention. However, the court conditioned its holding upon the defendant supplying the plaintiffs with the name of its registered representative and an accurate current address. Northwest Aluminum Co. v. VAW Aluminum, A.G., CV No. 02-398-JE (Order, Oct. 4, 2002).

Plaintiffs' Counsel:
Craig Bachman
Defense Counsel:
Daniel Skeritt (Local)

Torts

Plaintiff was injured by a stampede of shopping carts at a newly opened retail store. A large number of carts had allegedly been left in a precarious position by painters who had to move them to do some last minute repairs to the store's exterior. Plaintiff filed an action against the general contractor and the painting subcontractor asserting various negligence claims and a claim under the Oregon Employer's

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Liability Act (OELA).

Defendants moved for partial summary judgment against the OELA claim on grounds that the plaintiff's work as a retail stock clerk was not "inherently dangerous" and because they did not fall within the definition of an employer under the statute.

Judge Janice M. Stewart questioned the validity of the state's interpretation of "inherently dangerous work," but nevertheless concluded that because the focus must be upon the employee's activity at the time of the incident, the issue presented a fact question for the jury. However, the court held that defendants did not have charge of or responsibility for the work plaintiff was performing at the time of his injury and, thus, defendants could not be held liable as "employers" under the OELA. Harwood v. Blackhawk, Inc., CV 01-1516-ST (Opinion, September 5, 2002).

Plaintiff's Counsel:

R Adian Martin

Defense Counsel:

Deanna Wray; Michael Stone

Bankruptcy

The IRS filed an action against a couple who had declared Chapter 7 Bankruptcy. The IRS claimed that the debtors engaged in a series of transactions to hide assets from their creditors. The

debtors re-opened their bankruptcy proceeding in 1997 and the action remains open. While the IRS wanted to proceed with a declaratory judgment action in federal court; defendants moved to transfer the action to the bankruptcy court pursuant to Local Rule 2100-1.

Judge Janice M. Stewart held that plaintiff's first claim, which seeks a determination of whether its claim was discharged in the initial bankruptcy, should be decided by the bankruptcy court pursuant to the local rule. Plaintiff's second claim, which seeks entry of a judgment, would be deferred until the bankruptcy court ruled on the underlying merits. United States v. Macgregor, CV 02-459-ST (Opinion, September 27, 2002).
Plaintiff's Counsel:

Norma Schrock (D.C.)

Defense Counsel:

Jeffrey Cheyne

Stephen Boyke

Contracts

A wood chip seller filed an action against a buyer to resolve disputes that had arisen over a sales agreement. The parties settled the action and plaintiff thereafter filed an action asserting that defendant had breached the settlement contract by making it impossible for plaintiff to comply

with the contract's terms.

Specifically, plaintiff alleged that defendant wrongfully insisted that plaintiff adhere to product quality standards set forth in the settlement agreement. Plaintiff attempted to rely upon general practices in the industry and "course of dealing" evidence under Oregon's UCC 71.2050(1) to essentially vary the terms of the contract.

Judge Anna J. Brown held that, pursuant to the express terms of the contract, defendant had the right to insist upon quality standards to ensure contract compliance. The court rejected plaintiff's attempts to vary the contract terms under various theories and granted defendant's motion for partial summary judgment against those claims. In reaching this conclusion, the court denied a defense motion to strike a letter plaintiff submitted as an exhibit as barred by the parol evidence rule; the court held such evidence was admissible to show context for the settlement agreement under O.R.S. 42.220. Prineville Sawmill Co. v. Longview Fibre Co., CV 01-1073-BR (Opinion, September 23, 2002).

Plaintiff's Counsel:

Gregory P. Lynch

Defense Counsel:

Charles J. Pruitt